

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SPIN MASTER LTD.,

Plaintiff,

v.

DECISION AND ORDER
08-CV-923A

BUREAU VERITAS CONSUMER
PRODUCTS SERVICES, INC. and
EUROFINS PRODUCT SAFETY LABS,

Defendants.

This case was referred to Magistrate Judge H. Kenneth Schroeder, Jr. pursuant to 28 U.S.C. § 636(b)(1). On May 18, 2010, defendant Bureau Veritas Consumer Products Services, Inc. filed a motion for judgment on the pleadings dismissing Count Three of plaintiff's amended complaint (Dkt. No. 71). On June 11, 2010, defendant Eurofins Product Safety Labs filed a motion to join the motion for judgment on the pleadings (Dkt. No. 77). On August 18, 2010, plaintiff filed a motion for leave to file a second amended complaint (Dkt. No. 84). On March 7, 2011, Magistrate Judge Schroeder filed a Report and Recommendation (Dkt. No. 113), recommending that defendants' joint motion for judgment on the pleadings be granted and that plaintiff's motion for leave to amend be denied.

Plaintiff filed objections to the Report and Recommendation on March 21, 2011. Defendants filed responses to plaintiff's objections on April 8 and 9, 2011. Plaintiff filed reply papers on April 15, 2011. The Court has deemed oral

argument unnecessary and has considered the motion submitted on papers pursuant to Rule 78(b) of the Federal Rules of Civil Procedure.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which objections have been made. Upon a *de novo* review of the Report and Recommendation, and after reviewing the submissions from the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Schroeder's Report and Recommendation, the Court grants defendants' motion for judgment on the pleadings (Dkt. Nos. 71, 77) and dismisses Count Three of plaintiff's amended complaint. The Court also denies plaintiff's motion for leave to file a second amended complaint (Dkt. No. 84).

This case is referred back to Magistrate Judge Schroeder for further proceedings.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: April 22, 2011